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15 *Attorneys for Plaintiff Paul Bihari*

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 PAUL BIHARI, individually, and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 TIM & JULIE HARRIS REAL ESTATE  
23 COACHING,  
24 HARRIS SUCCESS SYSTEMS

25 Defendants.  
26

Case Number:

**CLASS ACTION**

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF PURSUANT TO THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. §§  
227 ET SEQ.**

**DEMAND FOR JURY TRIAL**

## INTRODUCTION

1  
2 1. Paul Bihari (“Plaintiff”) bring this Class Action Complaint for  
3 damages, injunctive relief, and any other available legal or equitable remedies,  
4 resulting from the illegal actions of Harris Success Systems and Tim and Julie  
5 Harris Real Estate Coaching (“Defendants”), in negligently and/or willfully  
6 contacting Plaintiff through SMS or “text” messages on Plaintiff’s wireless  
7 telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §§  
8 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

## JURISDICTION AND VENUE

9  
10 2. The Court possesses federal question subject matter jurisdiction over  
11 TCPA claims. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012).

12 3. Venue is proper in this district under 28 U.S.C. § 1391 because  
13 Defendants continuously conducts business in this district.

## PARTIES

14  
15 4. Plaintiff Paul Bihari is, and at all times mentioned herein was, a citizen  
16 and resident of the State of California.

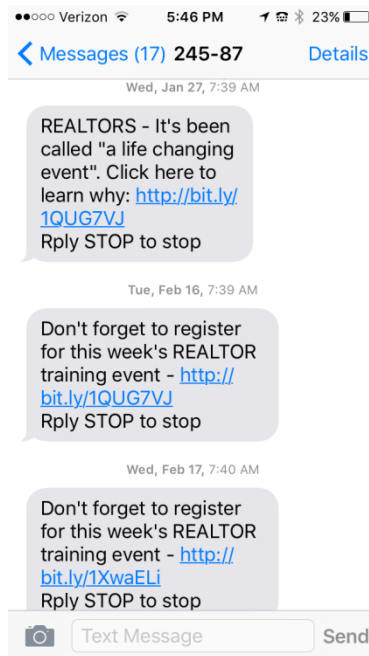
17 5. Defendants are, and at all times mentioned herein was, businesses that  
18 operate various real estate coaching classes aimed at teaching real estate  
19 professionals how to grow their businesses. Plaintiff is unaware of the type of  
20 business organization under which Defendants conduct business.

## FACTUAL ALLEGATIONS

21  
22 6. In recent years, marketers stymied by federal laws limiting solicitation  
23 by telephone, facsimile machine, and email have increasingly looked to alternative  
24 technologies through which to send bulk solicitations to consumers easily and  
25 cheaply.

26 7. One of the newest methods of bulk marketing is to advertise through  
27 text messages sent to mobile phones.





14. The above-referenced messages were sent from an “SMS Shortcode”.

15. The above-referenced messages were sent using an ATDS.

16. Defendants never advised Plaintiff in writing or otherwise that they would use his wireless number to send him promotional text messages through an ATDS.

17. The above-referenced messages constitute “calls” under the TCPA that were not made for emergency purposes, as defined by 47 U.S.C. § 227 (b)(1)(A).

18. Defendants made these calls to promote their goods and services.

19. Defendants made these calls to Plaintiff’s wireless telephone number using an “automatic telephone dialing system” (“ATDS”)—as defined by 47 U.S.C. § 227 (a)(1) and as prohibited by 47 U.S.C. § 227 (b)(1)(A)—which had the capacity to store or produce and dial numbers randomly or sequentially, and to place telephone calls and/or send text messages to Plaintiff’s cellular telephone number.

20. Plaintiff’s telephone number is, and at all relevant times was, assigned to a cellular telephone service, as set forth in 47 U.S.C. 227(b)(1)(A)(iii).

1           21. Plaintiff is the authorized, intended, and/or sole user of the cellular  
2 telephone number that Defendants called and/or to which it sent text messages.

3           22. Defendants intended to call and/or send text messages to—and in fact  
4 called and/or sent text messages to—Plaintiff’s wireless telephone number, and  
5 Plaintiff received the calls and/or text messages.

6           23. Plaintiff did not provide Defendants or their agents prior express  
7 consent to receive unsolicited text messages pursuant to 47 U.S.C. § 227 (b)(1)(A).

8           24. These calls and/or text messages invaded Plaintiff’s privacy. These  
9 telephone text messages by Defendants or its agents violated 47 U.S.C. § 227(b)(1).

10          25. In sending the messages to Plaintiff, Defendants acted as each other’s  
11 agent in fact, alter-egos, aided and abetted one another, and/or co-conspirators.

12                           **CLASS ACTION ALLEGATIONS**

13          26. Plaintiff brings this action on behalf of himself and on behalf of all  
14 others similarly situated (“the Class”) as follows:

15               All persons within the United States who received any SMS or text  
16 messages from Defendants or its agents on any wireless phone during  
17 the period of time beginning October 17, 2013 and continuing until  
18 the date the Class is certified.

19          27. Defendants and their employees or agents are excluded from the Class.

20          28. Plaintiff does not know the number of members of the Class, but  
21 believes the Class Members number in the thousands, if not more. Therefore, this  
22 matter should be certified as a Class action to assist in the expeditious litigation of  
23 this matter.

24          29. The joinder of the Class Members is impractical and the disposition of  
25 their claims in the Class action will provide substantial benefits both to the parties  
26 and to the court. The Class can be identified through Defendants’ records or  
27 Defendants’ agents’ records.

28          30. There is a well-defined community of interest in the questions of law  
and fact involved affecting the parties to be represented. The questions of law and

1 fact to the Class predominate over questions which may affect individual Class  
2 Members, including the following:

- 3 a. Whether Defendants or their agents sent SMS or text messages  
4 without the recipients' prior express written consent;
- 5 b. Whether Defendants or their agents used any automatic  
6 telephone dialing system to send SMS or text messages;
- 7 c. Whether the numbers that were sent SMS or text messages were  
8 assigned to a wireless carrier;
- 9 d. Whether SMS or text messages constitute calls for the purposes  
10 of the TCPA;
- 11 e. Whether Plaintiff and the Class Members are entitled to  
12 statutory damages for SMS or text messages received; and
- 13 f. Whether Defendants and their agents should be enjoined from  
14 engaging in such conduct in the future.

15 31. Because Plaintiff received at least one unsolicited telephone SMS or  
16 text message from Defendants without prior express consent, Plaintiff is asserting  
17 claims that are typical of the Class. Plaintiff will fairly and adequately represent  
18 and protect the interests of the Class in that Plaintiff has no interests antagonistic to  
19 any member of the Class.

20 32. Plaintiff and the members of the Class have all suffered irreparable  
21 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class  
22 action, the Class will continue to face the potential for irreparable harm. In  
23 addition, these violations of law will be allowed to proceed without remedy and  
24 Defendants will likely continue such illegal conduct. Because of the size of the  
25 individual Class Members' claims, few, if any, Class Members could afford to  
26 individually seek legal redress for the wrongs complained of herein.

1           33. Plaintiff has retained counsel experienced in handling consumer class  
2 action claims.

3           34. A class action is a superior method for the fair and efficient  
4 adjudication of this controversy. Class-wide damages are essential to induce  
5 Defendants to comply with federal law. The interest of Class Members in  
6 individually controlling the prosecution of separate claims against Defendants is  
7 small because the maximum statutory damages in an individual action for violation  
8 of privacy are minimal. Management of these claims is likely to present  
9 significantly fewer difficulties than those presented in many class claims.

10           35. Defendants have acted on grounds generally applicable to the Class,  
11 thereby making appropriate final injunctive relief and corresponding declaratory  
12 relief with respect to the Class as a whole.

13           36. Plaintiff will seek certification under Federal Rule 23(b)(2) for the  
14 injunctive relief and Rule 23(b)(3) for damages.

15                                   **FIRST CAUSE OF ACTION**  
16           **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
17                                   **47 U.S.C. §§ 227 *ET SEQ.***

18           37. Plaintiff incorporates by reference all of the above paragraphs of this  
19 Complaint as though fully stated herein.

20           38. Defendants, using an ATDS, sent text messages to Plaintiff and the  
21 other Class Members at telephone numbers assigned to a paging service, cellular  
22 telephone service, specialized mobile radio service, or other radio common carrier  
23 service, or any service for which the called party is charged for the call.

24           39. By using an ATDS, Defendants were able to effectively send  
25 thousands of text messages simultaneously to lists of thousands of cellular phone  
26 numbers of consumers without human intervention. These text messages were  
27  
28

1 made *en masse* without the prior express written consent of Plaintiff and the other  
2 members of the Class to receive such text messages.

3 40. The foregoing acts and omissions of Defendants and their agents  
4 constitute violations of the TCPA, including but not limited to each and every one  
5 of the above-cited provisions of 47 U.S.C. §§ 227 *et seq.*

6 41. As a result of Defendants' and Defendants' agents' violations of 47  
7 U.S.C. §§ 227 *et seq.*, Plaintiff and the Class are entitled to an award of \$500.00 in  
8 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
9 227(b)(3)(B).

10 42. The foregoing acts and omissions of Defendants and its agents  
11 constitute numerous and multiple knowing and/or willful violations of the TCPA,  
12 including but not limited to each and every one of the above-cited provisions of 47  
13 U.S.C. §§ 227 *et seq.*

14 43. As a result of Defendants' knowing and/or willful violations of 47  
15 U.S.C. §§ 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as  
16 provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47  
17 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

18 44. Plaintiff and the Class are also entitled to and seek injunctive relief  
19 prohibiting such conduct in the future.

## 20 PRAYER FOR RELIEF

21 **Wherefore**, Plaintiff respectfully requests the Court grant Plaintiff and the  
22 other Class Members the following relief against Defendants:

23 1. As a result of Defendants' and Defendants' agents' violations of 47  
24 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class Member \$500.00 in  
25 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
26 227(b)(3)(B).



1           2.     As a result of Defendants' and Defendants' agents' willful and/or  
2 knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each  
3 Class Member treble damages, as provided by statute, up to \$1,500.00 for each and  
4 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

5           3.     Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks for himself and  
6 each Class Member injunctive relief prohibiting such conduct in the future.

7           4.     Plaintiff seeks for himself and each Class Member an award of  
8 reasonable attorneys' fees and costs to Plaintiff's counsel, including attorneys' fees,  
9 *inter alia*, pursuant to California Code Civil Procedure Section 1021.5.

10          5.     Plaintiff seeks for himself and each Class Member any other relief the  
11 Court may deem just and proper or any other remedy available for Defendants'  
12 violations alleged herein.

13  
14                               **DEMAND FOR JURY TRIAL**

15           Plaintiff demands a trial by jury on all claims so triable.

16  
17   Dated: April 15, 2016

Respectfully submitted,

18  
19                               By: */s/ Richard D. Lambert*

20                               Richard D. Lambert  
21                               Stonebarger Law, APC  
22                               Attorneys for Plaintiff Paul Bihari  
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